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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/424,104	11/18/99	BRONK	B PC9576A
			EXAMINER

PAUL H GINSBURG  
PFIZER INC  
235 EAST 42ND STREET  
20TH FLOOR  
NEW YORK NY 10017-5755

HM12/0108

PESELEV, E	PAPER NUMBER
ART UNIT	8

1623

DATE MAILED:

01/08/01

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 12/11/00
- ☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-28 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-2, 15-20 and 22-28 is/are rejected.
- ☒ Claim(s) 3-13 and 21 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

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-SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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Claims 1-2 and 14-20 and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hauske et al (U.S. Patent No. 4,512,982) in view of Yang (U.S. Patent No. 5,441,939) for the reasons set forth in the Office Action of June 13, 2000.

Applicant's arguments filed December 11, 2000 have been fully considered but they are not persuasive.

The compounds disclosed by Yang are closely analogous erythromycin derivatives having antibacterial activity. A person having ordinary skill in the art at the time the instant invention was made would have expected that by modifying erythromycin derivatives disclosed by Hauske et al at the 4"-position in accordance with the teaching by Yang would result in compounds having antibacterial activity. Note that Yang teaches an alkyl or alkenyl substituent at the 4"-position.

Applicant's argument that Yang et al does not teach a methylene linker at the 4"-position has been found persuasive with respect to claims 3-13 and 21 which are limited to compounds encompassing such a linker.

Claims 3-13 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

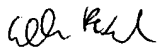
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

examiner should be directed to Elli Peshev whose telephone number is (703) 30804616. The examiner can normally be reached on weekdays from 9.30 a.m. to 6.00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

  
ELLI PESELEV  
PRIMARY EXAMINER  
GROUP 1200